

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 621 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO.LTD.

Versus

KANTABEN BABULAL PANCHAL

Appearance:

MR ARUN H MEHTA for Petitioner

MR HEMANT S SHAH for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/08/96

ORAL JUDGEMENT

1. At the joint request of learned counsel for the respective parties this appeal is taken up for final hearing today.

2. It is pertinent to bear in mind certain facts

which are not disputed on the record. The claim for damages put up by the original claimants has gone undefended for all practical purposes inasmuch as learned advocate for the insurer-appellant appears to have fallen seriously ill after filing her Vakalatnama before the Claims Tribunal. In fact even a written statement was not filed on behalf of the appellant. The Tribunal, therefore, proceeded to record the evidence on behalf of the claimants, and thereafter closed the evidence even for the defendant-insurer and passed an award which was for all practical purposes an exparte award. While doing so the Tribunal blindly accepted whatever evidence was led by the claimants.

3. Under other circumstances I would have thought that this is a fit case for remand, whereby the appellant-insurer would have an opportunity of leading appropriate evidence to counter the evidence led by the claimants. However, both counsel agree that this course, though permissible in law, would entail considerable loss of time and also require additional expenditure. To avoid this, a request has been made to dispose of the matter on the evidence as it stands, giving due allowance for the fact that the matter was conducted before the Tribunal exparte.

4. Learned counsel for the insurer has sought to challenge the judgement and award of the Tribunal only under one head viz. future economic loss.

5. On behalf of the appellant it is contended that there is no direct and/or substantial evidence as regards the actual current income of the claimant. Although it is an admitted position that she is a salaried employee, she has not produced any evidence whatsoever on record to establish what her real income was. The Tribunal was therefore not justified in proceeding merely on her oral assertion. As against this, learned counsel for the respondent-original claimant contended that the Tribunal has failed to take into account future prospects, and for this reason the future economic loss sustained by the claimant would be somewhat higher than actually awarded.

6. After having discussed the various pros and cons of the matter, and having applied my mind to such evidence that is available on record, I have been able to narrow down the difference between the two counsel, as to the basis on which the future economic loss of the claimant can be computed, giving due weightage to future prospects as well.

7. After taking into consideration all the relevant factors, learned counsel for the appellant submitted that for the purpose of computation of future economic loss, a figure of Rs.1000/- per month as income in the hands of the claimant would be appropriate, whereas the corresponding figure suggested by the learned counsel for the claimant was Rs.1500/-. Ultimately both the counsel agreed to leave this figure to the court.

8. After giving due consideration to all the relevant materials on record and after giving due weightage to all the relevant facts and circumstances, I am of the opinion that for the purpose of computation of future economic loss, the relevant figure as regards the monthly income can be fairly determined at Rs.1100/- per month. This would amount to Rs.13200/- per annum. There is no serious controversy as regards the partial permanent disability as found on the record viz.28.5%. Thus, the future economic loss in terms of money would be 28.5% of Rs.13200/- per annum i.e Rs.3762/-.

9. As regards the proper multiplier to be applied, there is no controversy between the learned counsel. Looking to the age of the claimant and the schedule as introduced by the amendment in the Motor Vehicles Act, learned counsel agreed that the proper multiplier would be 15 (on the facts and circumstances of the case). Thus, when the abovementioned annual economic loss is multiplied by 15, the future economic loss would amount to Rs.56,430/-. The amount awarded under this head would, therefore, require to be modified to the aforesaid extent.

10. Although counsel for the appellant sought to raise the contention as regards the rate of interest payable under the impugned award, I am not inclined to entertain this submission seriously for the simple reason that the rate of 15% per annum from the date of filing of the claim is neither unreasonable, nor unconscionable. I am, therefore, not inclined to interfere with this part of the award.

11. No other contention is raised.

12. In the result, the appeal is partly allowed and the impugned award shall stand modified only to the extent stated hereinabove. There shall be no order as to costs of this appeal.

13. Decree accordingly.
